

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOHN R. CHAVERS,

Plaintiff,

v.

WASHINGTON STATE PENITENTIARY;
WSP SUPERINTENDENT HOLBROOK; DOC
MEDICAL DIRECTOR HAMMOND; and CI
BUILDING MANAGER BRAD SANDAU,

Defendants.

CASE NO. 2:12-CV-5008-EFS

**ORDER ADOPTING THE REPORT AND
RECOMMENDATION, AND SETTING
FILING DEADLINE**

On July 6, 2015, Magistrate Judge John Rodgers filed a Report and Recommendation to Deny Defendants' Motion for Summary Judgment. ECF No. 138. Defendants filed objections to the Report and Recommendation, ECF No. 140, to which Plaintiff John Chavers responded, ECF Nos. 141 & 152.

The Ninth Circuit's decision in this matter, *Chavers v. Holbrook*, states in pertinent part, "we conclude that summary judgment on Chavers' employment discrimination claim under the Rehabilitation Act (RA) was improper because Chavers raised a genuine dispute of material fact as to whether defendants' reasons for not hiring him were solely by reason of his disability." No. 13-36142, 585 Fed. App'x 360 (9th Cir. Oct. 7, 2014) (unpublished opinion). It cited three cases among which was *Gates*

1 v. *Rowland*, 39 F.3d 1439, 1445-46 (9th Cir. 1994); it noted in a
2 parenthetical that the case analyzed "the RA in the prison employment
3 setting."

4 The complaint before both the District Court and the Ninth Circuit
5 was the First Amended Complaint (FAC). It contained a specific section
6 addressing Mr. Chavers' employment-discrimination claim. ECF No. 10.
7 In it, Mr. Chavers stated, "WSP CI, I learned, had installed some kind
8 of ramp through the medical detector, making it impossible for me to
9 clear it." But that was not the only point he made in his FAC regarding
10 the fact that he had not been hired. He clearly stated that the
11 proffered reason of his "poor work performance" was an "outright lie."
12 Taken together, the FAC asserts that his record of past employment
13 demonstrated that his work had been more than satisfactory and that
14 the installation of the ramp was an effort to prevent him from
15 employment on the basis of his disability - being wheelchair bound. As
16 the Court construes the employment-discrimination claim in the FAC,
17 Mr. Chavers asserted that the true reason for the refusal to hire him
18 was his disability - being wheelchair bound. The Ninth Circuit, based
19 on the FAC and the record at the summary-judgment stage, found there
20 was a genuine issue of material fact as to the Defendant's reasons for
21 not hiring him.

22 On remand, Defendants filed a new summary-judgment motion that in
23 pertinent part addressed the issue of whether Defendants' installation
24 of a ramp at security violated Mr. Chavers' rights under the RA.
25 Defendants take the Ninth Circuit's citation of *Gates v. Rowland* to
26 focus attention on the reasonableness of a prison regulation or policy

1 as articulated in *Turner v. Safley*, 482 U.S. 78 (1987). The Court's
2 view of the *Gates* citation is that the Ninth Circuit was simply noting
3 that the RA applied in an employment setting. Had the Ninth Circuit
4 wanted to narrow the issue to *Turner* factors, it would have stated as
5 it often has that it was reversing and remanding to the district court
6 for analysis of the employment issue using the *Turner* factors. It did
7 the opposite: it actually found a genuine dispute of material fact
8 regarding the reasons Mr. Chavers was not hired.

9 Accordingly, **IT IS HEREBY ORDERED:**

- 10 1. The Report and Recommendation, **ECF No. 138**, is **ADOPTED**.
11 2. Defendants' Motion for Summary Judgment, **ECF No. 112**, is
12 **DENIED IN PART AND GRANTED IN PART**.
13 3. Mr. Chavers' Motion to Expedite, **ECF No. 132**, is **DENIED AS**
14 **MOOT**.
15 4. The case caption shall be amended as follows:

16 JOHN R. CHAVERS,
17 Plaintiff,
18 v.

19 WASHINGTON STATE PENITENTIARY,
20 Defendant.
21

- 22 5. A telephonic scheduling conference is set for **Monday,**
23 **November 23, 2015, at 11:00 a.m.** The parties are to call
24 the Court's public conference line, **1-888-363-4749**, and when
25 prompted, enter access code **7621230**, and security code **1100**.
26 **Defense counsel shall coordinate with the facility in which**

1 Mr. Chavers is held to ensure that he can participate in
2 this telephonic conference on a phone line, which provides
3 a clear transmission, and with ready access to his legal
4 materials.

5 6. No later than **November 13, 2015**, the parties shall file a
6 joint status report suggesting trial dates, estimating trial
7 length, indicating whether mediation or another alternative
8 dispute resolution will be engaged in by the parties, and
9 listing any other matters that will aid an efficient trial
10 if this case proceeds to trial, including whether the
11 parties will utilize technology in the presentation of the
12 case.

13 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
14 Order and provide copies to Plaintiff, counsel, and Magistrate Judge
15 Rodgers.

16 **DATED** this 23rd day of September 2015.

17 s/Edward F. Shea

18 EDWARD F. SHEA

19 Senior United States District Judge
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